

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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DEVIN SHIMKO,

Plaintiff,

v.

ORDER

11-cv-831-wmc

JEFF WAGNER TRUCKING, LLC,  
JEFFREY M. WAGNER and HENRY  
A. WAGNER,

Defendants.

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In advance of today's final pretrial conference, the court issues its rulings on the motions in limine and attaches proposed voir dire, jury instructions and verdict forms for the parties review.

**I. Motions in Limine**

Defendants have submitted three motions in limine to which plaintiff filed no opposition. (Dkt. #52.) The court addresses them only briefly.

*First*, defendants ask the court to exclude plaintiff from presenting evidence or witnesses "not specifically relevant to the claims at issue." The Federal Rules of Evidence already provide that irrelevant evidence is not admissible. *See* Fed. R. Evid. 402. Thus, to the extent defendants seek a blanket ruling that irrelevant evidence will be excluded, that request will be denied as unnecessary. In addition to being free to object to specific evidence during trial, both sides are encouraged to advise the court at the final pretrial conference if they believe any evidence should be excluded generally.

*Second*, defendants ask the court to exclude Carrie Wise, a previously undisclosed witness. Wise appears nowhere in Shimko's initial disclosures (dkt. ##18, 33), nor does

Shimko provide her address, telephone number or any information related to the subject matter of her testimony. In addition, Shimko offers no excuse for his failure to disclose this witness sooner. Accordingly, the motion will be granted.

*Third*, defendants ask the court to exclude all evidence “not directly and specifically relevant to Devin Shimko during the time relevant to [the] complaint.” Again, the court declines to rule broadly that irrelevant evidence will be excluded. Defendants do mention “QuickBooks data and reports” in this request, which suggests that they have a particular piece of evidence in mind, but the court is not going to guess as to what that might be.

## **II. Exhibits**

Plaintiff objects to none of defendants’ proposed exhibits, including Exhibits 503, 504 and 505, which are the affidavits of Jeffrey Wagner, Henry Wagner and Shimko, respectively. Since “affidavits are not normally admissible at trial,” this failure is somewhat inexplicable. *See Stinnett v. Iron Works Gym/Exec. Health Spa, Inc.*, 301 F.3d 610, 613 (7th Cir. 2002). Still, the court will not admit the Wagner affidavits unless offered by defendants in lieu of testimony or by plaintiff. The Shimko affidavit will be admitted if offered into evidence.

Defendants object pursuant to Rules 402 and 403 to a number of plaintiff’s exhibits, including “truck charts,” “driver load spreadsheets” and “driver load spreadsheet summaries” from 2008 and 2009, as well as a profit and loss statement from Jeff Wagner Trucking, LLC. The defendants argue that these documents are not relevant to determining whether the IC Agreement and Equipment Lease with *Shimko* violate the Truth-in-Leasing regulations. Even if relevant, the defendants argue these documents will mislead the jury

because they contain evidence regarding “other business relationships, events, and relative profitability.” Plaintiff has yet to provide copies of these exhibits as required under the court’s procedures and is admonished to do so before today’s final pretrial conference. The court will reserve until then.

Defendants also object to exhibit P-12, Shimko’s W-2 forms from 2006 and 2007, arguing that neither form is relevant because they are outside the time boundaries of the complaint. Given that the parties first entered into the IC Agreement in December of 2007, this objection appears to have merit, but the court will reserve on this until the final pretrial conference.

#### ORDER

IT IS ORDERED THAT:

- (1) defendants’ motions in limine (dkt. #52) are GRANTED IN PART as set forth above; and
- (2) the court RESERVES on defendants’ objections to plaintiff’s exhibits; plaintiff shall file a copy of each contested exhibit before the final pretrial conference.

Entered this 27th day of January, 2015.

BY THE COURT:

/s/

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William M. Conley  
District Judge